goal will still be achievable for companies that sincerely and irreversibly commit themselves to facilitating competitive local markets.

1. Interconnection.

The Application demonstrated that, as the SCPSC found, BellSouth satisfies the first checklist requirement by making interconnection available in accordance with sections 251(c)(2) and 252(d)(1) and the Commission's implementing regulations. See BellSouth Br. at 33-37.

MCI criticizes BellSouth's Collocation Handbook because it has not been approved by the SCPSC and leaves some of the details of individual collocation arrangements to be worked out on a case-by-case basis. MCI at 62-63. MCI cannot seriously question that BellSouth has provided a particularized description of its collocation arrangements in the Application. See Varner Reply Aff. ¶ 15; Varner Aff. ¶¶ 60-63. Moreover, MCI ignores that the Collocation Handbook was presented to the SCPSC in the course of proceedings as an attachment to Robert C. Scheye's Direct Testimony dated April 1, 1997. See Application App. C at Tab 60, Ex. 10 (Ex. RCS-7 to Scheye Testimony). MCI also overlooks that collocation is by definition an individual arrangement that must be tailored to the local network arrangements of CLECs and BellSouth. If every possible detail were addressed in a standardized document, that document would either be overly restrictive for CLECs, or so lengthy and complicated that it would be unusable.

MCI further suggests that BellSouth does not allow CLECs to interconnect at its local tandem switches. MCI at 63. This is false. See BellSouth Br. at 34 (citing Statement § I.A.1). MCI's affiant concedes that "BellSouth seems to allow interconnection at the local tandems" and that BellSouth interconnects with independent telephone companies at local tandem switches.

MCI's Henry ¶ 27. While MCI complains that it does not have full information for interconnecting at local tandems, MCI claims neither to have sought to interconnect at a local tandem switch nor to have asked for the information to complete such interconnection.

MCI's argument that BellSouth must terminate calls on the networks of CLECs with which it does not have interconnection agreements is even more far-fetched. See MCI at 64; MCI's Henry at 15-16. Interconnection and exchanges of traffic between Bell companies and CLECs are governed by negotiated or arbitrated agreements. 47 U.S.C. §§ 251, 252. Nothing in the Act requires BellSouth to terminate traffic on the network of a CLEC with which it does not have an agreement; it is unclear where the terms governing such a non-contractual arrangement would be found. If two CLECs wish to exchange traffic, they may interconnect directly or both negotiate agreements with an intermediary carrier such as BellSouth. MCI cannot, however, force BellSouth to interconnect with other CLECs that have not negotiated their own agreements.

Sprint's complaint that BellSouth does not permit it to co-mingle interLATA traffic and local traffic on the same trunks is essentially an effort to evade access charges. See Sprint at 28-30. By seeking to combine interLATA, intraLATA, and local traffic on the same trunks, Sprint proposes an arrangement that would make it impossible to render proper bills for BellSouth's trunking services or to implement federal and state access charge regimes. See Varner Reply Aff. ¶ 14 (noting need to distinguish 12 types of traffic for billing purposes). 47 U.S.C. § 251(g) specifically preserved the pre-existing federal access charge structure and the Commission has stated that interexchange carriers may not use the local competition provisions of the Act to evade this provision. See Local Interconnection Order, 11 FCC Rcd at 15862-64, ¶¶ 716-720, 15983-84, ¶ 980.

BellSouth offers routing of local and intraLATA toll traffic over one-way trunk groups. Access traffic, as well as other traffic utilizing BellSouth's intermediary tandem switching function, can be routed via separate trunk groups that are typically two-way. Varner Aff. ¶¶ 47. When traffic other than local traffic is routed on the same facilities as local traffic, each company will report to the other a Percentage Local Usage ("PLU"), the application of which will determine the amount of local minutes to be billed. Varner Aff. ¶ 48. This procedure allows proper billing of access charges in compliance with federal and state requirements. Id.

2. Unbundled Network Elements.

Opponents' principal objections to BellSouth's UNE offerings relate to pricing matters and the availability of UNE combinations — matters that have been resolved by the Eighth Circuit and discussed above. See supra Parts III(A) & (B). Other arguments raised by the CLECs regarding this checklist item require substantially less discussion.

AT&T objects that if a CLEC requests a combination of network elements that duplicates an existing BellSouth service, BellSouth will not allow the CLEC to retain interstate access charges. AT&T at 11-13; AT&T's Tamplin ¶¶ 14-15. This is another attempt to evade the SCPSC's determination, backed by the Eighth Circuit's recent holdings, that where CLECs order end-to-end BellSouth services, they are to be treated as resellers. See BellSouth Br. at 39-40; Varner Reply Aff. ¶ 38. BellSouth has made clear, however, that where CLECs compete using unbundled network elements, rather than resale, the CLEC will be able to collect access charges. BellSouth Br. at 43 (citing Varner Aff. ¶ 108); Varner Reply Aff. ¶ 38. This is true not just as a formal matter, but also as a practical matter due to BellSouth's provision of the information

CLECs need to bill their interexchange carrier customers for access services. Varner Reply Aff. ¶ 14.

MCI's principal argument under checklist item (ii) is that BellSouth's Bona Fide Request process leads to undue delays. MCI at 68. MCI complains that standardized arrangements should be available for unbundled loop distribution and unbundled transport with capacity greater than DS-1, as well as interconnection via a meet-point arrangement, two-way trunking for exchange of local traffic, and forms of interim number portability other than remote call forwarding and direct inward dialing. Id.; see also MCI's Henry ¶ 33 (discussing subloop elements of loop feeder and loop distribution); Intermedia at 10-11 (same). Significantly, MCI has not actually requested these items or sat down with BellSouth to work out arrangements that suit MCI's needs. Varner Reply Aff. ¶ 3.

The Bona Fide Request process is available to ensure that CLECs can work out new arrangements that meet their varied requirements: "Bona Fide Requests are to be used when a CLEC requests a change to any Services and Elements, including any new features, capabilities or functionalities." Statement Attach. B, § 1.0; see Varner Reply Aff. ¶¶ 3-4. After a CLEC has requested and received such a "change" or "new" feature, the CLEC will thereafter have access to that arrangement without resort to a new Bona Fide Request if such request is made within a reasonable amount of time. Moreover, once the Bona Fide Request process produces a technically feasible arrangement for one CLEC, all CLECs can obtain that same arrangement more quickly. Id. ¶ 4. Typically when a CLEC requests an item that another CLEC has already obtained via the Bona Fide Request process, BellSouth will be able to respond fully to that request promptly, simply by informing the requester of pre-existing arrangements that are

available. Id. It is only the first time that an arrangement is worked out — or where a CLEC requires a variation from the standard arrangements sought by other CLECs — that the process is likely to take the full time allotted. Id.

Nor, for that matter, is the Bona Fide Request process unreasonably lengthy for a wholly new request. See MCI at 67. Although the process may take longer than ordering some standard "off-the-shelf" items, BellSouth promises to deliver its preliminary analysis for new items within thirty days and a firm price quote "[a]s soon as possible, but in no event more than ninety (90) days after receipt of the request." Statement Attach. B, §§ 1.4, 1.5.

MCI raises a related complaint about BellSouth's commitment to use its best efforts to provide (1) information about the availability of dark fiber within ten days of a request and (2) access to the fiber itself within another thirty days. MCI's Henry ¶ 35. MCI recognizes that dark fiber is "excess transmission capacity." Id. ¶ 36. It does not acknowledge, however, that there is no formulaic way of determining whether particular capacity in BellSouth's network is "excess," and whether alternative arrangements can be made where the CLEC's initial request for dark fiber cannot be filled. BellSouth will provide a firm order commitment to CLECs as soon as the availability of dark fiber has been confirmed. Id.

3. Nondiscriminatory Access to Poles, Ducts, Conduits and Rights-of-Way.

Section 271(c)(2)(B)(iii) requires BellSouth to provide nondiscriminatory access to poles, ducts, conduits, and right-of-way owned or controlled by BellSouth. BellSouth's Statement provides such non-discriminatory access on terms that fulfill all statutory and regulatory requirements. Nine CLECs authorized to provide service in South Carolina have executed license agreements with BellSouth to attach facilities to BellSouth's poles and place facilities in

BellSouth's ducts and conduits. Compliance Order at 40; Milner Aff. ¶ 35. Such access is being furnished across BellSouth's region. Milner Aff. ¶ 35. Not a single commenter contests these points. BellSouth's compliance with this checklist item therefore is beyond dispute.

It is, moreover, necessary for the Commission to make an explicit finding that BellSouth has provided nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth. Unlike the DOJ (which does not even have a statutory role regarding checklist compliance), this Commission cannot simply choose to "express no view as to BellSouth's compliance or non-compliance with checklist requirements." DOJ at 13 n.23. If the section 271 application process is to have an end, the Commission must pass upon each checklist item so as to render a full decision in the case before it, and limit the issues in future applications by that same applicant and other companies. Indeed, if the Commission did not make express, favorable findings on checklist issues that are undisputed, parties seeking to slow interLATA competition would have an incentive to withhold arguments in each proceeding, to avoid final resolution of disputed issues. Encouraging such sandbagging would not serve the interests of this Commission or consumers who rely upon the 271 process to foster both long distance and local competition.

4. Loops.

Certain claims regarding BellSouth's offerings of local loops are so vague and unsupported that the Commission cannot possibly evaluate them, let alone accept them as true. For example, WorldCom alleges service interruptions during loop cut-overs, without providing any details (such as the state in which these alleged problems occurred). WorldCom's Ball ¶ 18; see also Intermedia at 38 (alleging refusal to provide data circuits, but citing correspondence in

which BellSouth did commit to provide data circuits). Such bare accusations cannot overcome hard data, such as BellSouth's study showing that of the 325 loops delivered to a CLEC in Georgia, 98 percent were cut over within 15 minutes. Milner Aff. ¶ 41; Milner Reply Aff. ¶ 5.

Sprint likewise complains vaguely that BellSouth has in some instances provided fewer unbundled loops than Sprint requested. Sprint at 18. Because Sprint refuses to give information sufficient to identify the orders, neither BellSouth nor the Commission is in a position to evaluate Sprint's claim. Milner Reply Aff. ¶ 9.

In other instances, opponents argue that BellSouth should be excluded from the long distance business today because of isolated problems that have been cured. ACSI, for example, points to cases in which customers experienced loss of service for several hours, rather than the five minute standard interval included in the BellSouth/ACSI Agreement. See ACSI's Falvey ¶ 29; ACSI at 31-32; see also Sprint at 17; Sprint's Closz ¶¶ 64-84. MCI alleges that 17 out of 540 MCI customers in BellSouth's region (about 3 percent) experienced significant loss of dialtone during cutovers. MCI at 23-24; MCI's King ¶ 185. These problems were experienced in late 1996 and early 1997, before BellSouth took corrective action. Milner Reply Aff. ¶¶ 3-5; Milner Aff. ¶¶ 41-44. "Since the corrective action was put in place in early 1997, no additional problems of this type have occurred." Milner Reply Aff. ¶ 4; Milner Aff. ¶ 44. In any event, inevitable glitches cannot undermine BellSouth's record of thousands of successful loop cut overs throughout its region. See Milner Aff. ¶ 43; see also Milner Reply Aff. ¶ 6 (addressing Intermedia claims regarding a single DS-1 order in May 1997).

Intermedia claims that BellSouth will not provide loops that Intermedia requested in order to provide Frame Relay service. Intermedia at 38. But as the Application explained in

anticipation of this argument, BellSouth and Intermedia have determined and agreed upon the loop types and sub-loop elements required to provide Intermedia's Frame Relay service, and BellSouth stands ready to provide them as soon as Intermedia asks. Milner Aff. ¶ 38; see Milner Reply Aff. ¶ 10.

Finally, critics complain that BellSouth's loop prices are too high to allow competition for local residential service (if one improperly ignores, as the critics do, the additional revenues CLECs will earn from toll, access, and vertical services). ACSI at 3 n.3, 16-17; ACSI's Falvey ¶ 22; Sprint at 39-49. As explained earlier, the SCPSC's approval of BellSouth's loop rates as cost-based in accordance with the Act, is determinative. See supra Part III(A). In any event, comparisons between loop rates and BellSouth's retail residential rates (as set by the SCPSC) say nothing about BellSouth's compliance with the cost-based pricing standard established by section 252(d)(1).

5. Unbundled Local Transport

BellSouth has demonstrated and the SCPSC has confirmed that BellSouth makes available unbundled local transport in accordance with checklist item (v). See BellSouth Br. 42-43. MCI raises the only objection to BellSouth's satisfaction of this checklist item that has not already been discussed, arguing that BellSouth cannot demonstrate compliance with the Act because BellSouth has provided only ten dedicated trunks in South Carolina and usage of shared transport has not been quantified. MCI's Henry ¶ 40. MCI seeks to resurrect an argument regarding the supposed necessity of CLEC orders that the Commission has properly rejected. See Michigan Order ¶ 114. Moreover, it is impossible to assign shared transport trunks for

purposes of calculating CLEC usage, because as the name implies, these trunks are shared by different users at different times. Milner Reply Aff. ¶ 12.

6. Unbundled Local Switching.

BellSouth has put in place procedures for ordering, provisioning, and maintenance of unbundled local switching. BellSouth Br. at 43-45. MCI's contention that BellSouth provides insufficient information regarding these offerings is meritless, see MCI's Henry at 23-24, for BellSouth provides CLECs with technical descriptions of their every aspect. Milner Aff. ¶ 50. Indeed, actual market experience demonstrates that CLECs that are ready to place orders are using BellSouth's unbundled switching services successfully. Id.

AT&T contends that BellSouth is refusing to provide customized or "selective" routing. AT&T at 4, 9; AT&T's Tamplin ¶¶ 42-52. In fact, as BellSouth has already indicated, it stands ready to provide such routing through line class codes where sufficient codes are available. Milner Aff. ¶ 51. Although no CLEC has requested such routing in South Carolina to date, BellSouth has finished its work to furnish customized routing in Georgia where AT&T requested that work. AT&T has simply not taken the service it demanded. Milner Reply Aff. ¶ 17. Selective routing using BellSouth's Advanced Intelligent Network ("AIN") platform soon will be available. Id. ¶ 22.

AT&T's attack on the Statement's provisions regarding CLEC access to vertical features is also without legal basis. See AT&T at 14-15. BellSouth currently imposes no charge for activation and use of vertical features. Varner Aff. ¶ 118. Final rates for the use of vertical features thereafter will be set by the SCPSC in accordance with the requirements of the Act. AT&T also is mistaken in arguing that BellSouth's Statement fails to satisfy the unbundling

requirements of the Local Interconnection Order with respect to vertical features. AT&T at 14-15. As the SCPSC determined, BellSouth allows CLECs to determine which vertical features they wish to activate in connection with unbundled switching. Compliance Order at 44.

Nor is there any merit to AT&T's contention that BellSouth refused to process orders for Call Hold and 900 number blocking. Milner Reply Aff. ¶ 15. As soon as AT&T indicated that it wanted 900 number blocking separated from 976 blocking, BellSouth worked with AT&T to accommodate this request and conclude an agreement. Id. BellSouth also indicated to AT&T that it would be willing to provide Call Hold as a "stand alone" feature as long as it is technically feasible, but AT&T has not yet tried to work out a technically feasible method of providing it. Id.

MCI complains that BellSouth does not offer trunk ports as separate unbundled network elements. As explained in the reply affidavit of Keith Milner, MCI seeks to create in this proceeding a new network element. See Milner Reply Aff. ¶ 16. BellSouth has committed to provide additional port types beyond those identified in its Statement as part of its switching offerings, see Statement § VI.A.1.d, but to date no CLEC — including MCI — has requested an unbundled trunk port via the Bona Fide Request process. Milner Reply Aff. ¶ 16.

Finally, and contrary to AT&T's assertions, AT&T at 12-13, BellSouth is capable of mechanically producing bills for CLECs' usage of unbundled local switching. Milner Reply Aff. ¶ 23. Such bills were sent out in September, and BellSouth is "unaware of any complaints from any CLEC regarding the accuracy, format or content of [those] bills." Id.

7. 911, E911, Directory Assistance, and Operator Call Completion Services.

Few concerns have been expressed about BellSouth's satisfaction of checklist item (vii). With respect to 911 services, ALTS suggests, by filing the affidavit of an ITC DeltaCom employee, that there has been a "911 problem." ALTS Attach. C, at ¶ 16. The affidavit does not mention where or when the alleged problem took place, but concedes that it apparently has been corrected. Id. AT&T raises concerns about its ability to obtain unbranded operator services and directory assistance. See AT&T at 16-17. These concerns are addressed by AT&T's ability to obtain customized routing using line class codes, as discussed above. See also Milner Reply Aff. ¶ 18. Accordingly, the Commission should explicitly and unequivocally find that BellSouth has met the requirements of section 271(c)(2)(B)(vii).

8. White Pages Directory Listings for CLEC Customers.

The SCPSC concluded that "CLEC subscribers receive no less favorable rates, terms and conditions for directory listings than are provided to [BellSouth's] subscribers" and that BellSouth "is providing White Pages directory listings to CLECs and their subscribers, with thousands in place today." Compliance Order at 47-48. Only MCI takes issue with that finding. It claims that BellSouth "has set up an unreasonable policy" whereby CLECs must request that their customers be listed in BellSouth's directories after service is transferred from BellSouth to the CLEC. MCI at 67. Although MCI argues that database listings should remain unchanged when the end user changes local carriers, the Act contains no such requirement and it would not be sensible. Upon notifying BellSouth that a customer has decided to change carriers, the CLEC simply informs BellSouth that the customer wishes (or does not wish) to be listed in various directories. This protects the accuracy of the directory database by ensuring that the customer has not changed carriers in conjunction with another change (such as a change of address) that

would affect his or her directory listing. The fact that only MCI questions BellSouth's procedure suggests the legitimacy of BellSouth's concern for database accuracy and how minor a burden the CLECs face.[1]

9. Nondiscriminatory Access to Telephone Numbers.

BellSouth adheres to the code administration guidelines published by the Industry Numbering Council. Milner Aff. ¶ 69. It has established procedures to provide nondiscriminatory NXX code assignments to CLECs in conformity with industry standards. Id. Pursuant to these procedures, BellSouth had assigned approximately 72 NPA/NXX codes for CLECs in South Carolina as of September 8, 1997. Id. BellSouth is unaware of any request from a CLEC for NPA/NXX code assignments that has been refused. Id.

MCI, through the affidavit of its employee Marcel Henry, suggests that BellSouth must take "appropriate precautions against NXX exhaust." MCI's Henry at ¶ 44. It is unclear what MCI proposes. However, steps such as limiting reservations of unused telephone numbers — cited as a potential threat to local competition by the DOJ — would appear to be what MCI has in mind. See supra Part III(C)(1). Here again, the comments in this proceeding highlight the need for this Commission to recognize that there can be no "perfect" checklist compliance.

[1] MCI also has argued that it is entitled to obtain from BellSouth directory listings for customers of independent LECs, even when those independent carriers have asked BellSouth not to provide such listings until they reach an agreement with the CLEC. MCI at 66. BellSouth has honored these requests from independent LECs and believes this is a matter to be resolved between the CLEC and the independent LEC. Milner Aff. ¶ 68. Unless a LEC has explicitly requested that BellSouth not provide its listings, however, BellSouth makes the listings of that local service provider available to MCI and other CLECs. Id.

MCI also complains that BellSouth does not notify unaffiliated CLECs of NXXs assigned to other CLECs, as well as that BellSouth does not test to ensure that unaffiliated CLECs' codes have been loaded into third parties' switches. MCI's Henry ¶ 46. As the reply affidavit of Alphonso Varner explains, it is not the role of BellSouth, nor is it even possible, "for BellSouth to ensure that another party appropriately reacts to NXX information that [BellSouth] submits to the Bell Communications Research, Inc. for inclusion in the Local Exchange Routing Guide (LERG)." Varner Reply Aff. ¶ 17.[2]

10. Databases and Associated Signaling.

Contrary to MCI's contentions, BellSouth has amply demonstrated that it offers nondiscriminatory access to call-related databases and related signaling, see MCI's Henry ¶ 47. BellSouth provides CLECs with access to BellSouth's signaling network either directly or through third party service providers. Milner Reply Aff. ¶ 21. As BellSouth has noted, see BellSouth Br. at 49-50, CLECs have successfully launched millions of queries to BellSouth's call-related databases. Id. This empirical evidence clearly satisfies BellSouth's burden with respect to this checklist requirement.

MCI's more specific allegations are equally unfounded. While MCI objects that BellSouth does not make SS7 signaling available for automatic call return, MCI's Henry ¶ 27, that is because call return does not use SS7 functionality. Milner Reply Aff. ¶ 25. MCI's claim that BellSouth is improperly failing to provide Feature Group D access to the 800 database, and requires use of SS7 access, see MCI's Henry ¶¶ 27-28, is similarly inaccurate. Milner Reply Aff.

[2] Low Tech Designs' claim of an exclusive entitlement to use of the *11 abbreviated dialing code is discussed in the reply affidavit of Keith Milner, at ¶ 29.

¶ 26. As it happens, however, BellSouth has not received a single request for 800 database access from a CLEC whose switches do not support the SS7 protocol. Id.

TCG's claim that BellSouth has failed to confirm signal transfer point ("STP") code activations also lacks merit. Although BellSouth believes this information is not sufficient to ensure proper interconnection, BellSouth does provide confirmations of STP code activation. Milner Reply Aff. ¶ 24. With respect to this checklist item as well, the CLECs have sought to create a problem where there is none.

11. Number Portability.

BellSouth has demonstrated, and the SCPSC has confirmed, that BellSouth satisfies the checklist's number portability requirements. See BellSouth Br. at 50-51. In the face of BellSouth's successful porting of over 13,000 numbers, Milner Aff. ¶ 97, opponents resort to raising isolated problems and portraying them as widespread. See ACSI at 30-32, 37-39; MCI at 64; Sprint's Closz at 30-32; WorldCom's Ball ¶¶ 19-21. These CLECs essentially argue that despite BellSouth's successful porting of numbers in thousands and thousands of instances, BellSouth must be denied relief as long as CLECs are able to list any problems at all, however old. The attached reply affidavit of Keith Milner establishes that the problems experienced by some CLECs were cured by BellSouth in early 1997. Milner Reply Aff. ¶¶ 7; see Milner Aff. ¶ 46. Indeed, Sprint candidly (and commendably) acknowledges that the causes of the problems "have been corrected" and BellSouth has worked with CLECs "to prevent future errors." Sprint's Closz ¶ 91.

MCI argues that even if BellSouth does successfully port numbers in the vast majority of cases and thereby enable CLECs to compete, "BellSouth makes no commitment" in the

Statement to coordinate loop cut overs and number portability. MCI at 64. This is inaccurate. The Statement expressly commits to "provide number portability to CLECs and their customers with minimum impairment of functionality, quality, reliability, and convenience." Statement § XI.B. In order to avoid impairing service, BellSouth coordinates loop cut overs with INP. See Milner Reply Aff. ¶ 8 ("Detailed guidelines for ordering number portability are set out in BellSouth's CLEC Ordering Guide, Section XV") & Stacy OSS Reply Aff., Ex. WNS-6.

12. Local Dialing Parity.

The Act requires BellSouth to provide CLECs with nondiscriminatory access to services and information that are necessary to allow local dialing parity in accordance with section 251(b)(3). 47 U.S.C. § 271(c)(2)(B)(xii). BellSouth has complied with this requirement, as the SCPSC concluded, Compliance Order at 51, and BellSouth demonstrated in its Application. BellSouth Br. at 51-52.

Mr. Moses of ITC DeltaCom claims that there is a "lack of dialing parity" because BellSouth offers an expanded local calling plan, "area plus." ALTS Comments, Attachment C, Affidavit of Steven D. Moses, ¶ 18. This issue has nothing to do with dialing parity. Customers of both BellSouth and CLECs dial the same number of digits to access the same geographical regions. There is no technical impediment that prevents ITC DeltaCom from offering an expanded local calling plan, in which customers dial the same number of digits to call the same geographical regions. See Varner Reply Aff. ¶ 39.

13. Reciprocal Compensation.

BellSouth's reciprocal compensation arrangements satisfy checklist item (xiii). See BellSouth Br. 52; Compliance Order at 52. The principal attack on BellSouth's satisfaction of

this checklist requirement concerns, not compensation for local traffic at all, but rather traffic carried to enhanced service providers ("ESPs"), for which compensation is not due because the traffic is not "local." See Varner Aff. ¶¶ 186-187.

CLECs evidently are marketing their services to ESPs, such as Internet service providers, in the hope of receiving additional revenues from the incumbent LECs for the high volumes of traffic delivered to those ESPs. As a result, not only is BellSouth incurring the investment to upgrade its facilities to absorb the increased Internet traffic, but it is also receiving demands from CLECs to be compensated for this traffic.

No such compensation is due. The Act's reciprocal compensation requirements apply only to local traffic. Local Interconnection Order, 11 FCC Rcd at 16013, ¶ 1034; Varner Aff. ¶¶ 186-187. Under settled Commission precedent, the jurisdictional nature of traffic is determined by the end-to-end nature of the call. See Long Distance/USA v. Bell Tel. Co. of Pennsylvania, 10 FCC Rcd 1634, 1637-38, ¶ 13 (1995) (the "end-to-end nature of the communications [is] more significant than the facilities used to complete [it] . . . [and] a single interstate communication that does not become two communications because it passes through intermediate switching facilities.").[3] Calls to ESPs, which are generally converted into interLATA data transmissions, are thus properly classified as interLATA calls. Indeed, the

[3] The D.C. Circuit made this clear in analyzing how MCI originally provided long distance service. As the court explained, an MCI subscriber "could enter the MCI network from any local phone . . . and, after entering a subscriber authorization code, dial an ordinary long-distance number." National Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095, 1106 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985) The call would then travel over MCI's "nationwide network of intercity private lines," id., before reentering a local network at the receiving end.

Commission has already concluded as much. See Notice of Proposed Rulemaking, Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 2 FCC Rcd 4305, 4306, ¶ 7 (1987) (ESPs, "like facilities-based interexchange carriers and resellers, use the local network to provide interstate services"). Accordingly, calls to ESPs are properly considered interLATA traffic not subject to reciprocal compensation.

In any event, as opponents recognize, this issue is already before the Commission in a separate proceeding initiated by ALTS.[4] BellSouth will of course be subject to any decision the Commission reaches in that proceeding. It is neither necessary, nor appropriate, nor workable, to use section 271 proceedings to resolve every outstanding issue under the 1996 Act.

None of the opponents' remaining objections to BellSouth's reciprocal compensation policies has merit. AT&T's complaint that rates established by the SCPSC in the AT&T arbitration are not cost-based, AT&T's Wood ¶¶ 21, 24-32, is just an attempt to reargue that arbitration proceeding. As already explained, the SCPSC's determinations on pricing matters are determinative for purposes of this proceeding.

AT&T also suggests that as a practical matter it must resort to bill and keep because BellSouth cannot provide the billing and usage data necessary to collect reciprocal compensation. AT&T at 13-14; AT&T's Tamplin ¶¶ 25-26. BellSouth's CRIS and CABS systems are, however, adequate to ensure accurate reciprocal compensation. See Hollett Aff. ¶¶ 3-6.

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[4] See WorldCom at 11; NCTA at 17 & n.45 (citing "Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," Public Notice, CCB/CPD Docket No. 97-30, rel. July 2, 1997).

MCI argues that CLEC networks using "ring" technology will not receive adequate compensation. MCI at 65-66; MCI's Henry ¶¶ 57-58. Again, this is a pricing issue for the SCPSC. Moreover, the Statement does not preclude MCI from seeking to negotiate individual arrangements that reflect the specific characteristics of its network (although MCI's suggestion that MCI should be compensated for the cost of tandem interconnection when tandem interconnection is not provided is "preposterous"). Varner Reply Aff. ¶ 19. BellSouth has successfully implemented reciprocal compensation arrangements with numerous carriers. Varner Reply Aff. ¶ 40.

Suggestions that BellSouth has not complied with its obligation to pay "reciprocal compensation" to CMRS providers are incorrect. See generally Comments of the Paging and Narrowband PCS Alliance of the Personal Communications Industry Association ("PNPA"). This Commission has concluded that the 1996 Act precludes BellSouth or any other incumbent LEC from charging CMRS providers for terminating LEC-originated traffic. Local Interconnection Order, 11 FCC Rcd at 16016, ¶ 1042. Accordingly, the Commission determined that incumbent LECs may not charge CMRS providers originating access charges for use of the LEC network. Id. As the attachments to the PNPA filing themselves indicate, BellSouth does not charge such originating access charges to CMRS providers. PNPA App. A at 2 (letter from David M. Falgoust to Frederick M. Joyce). Accordingly, BellSouth has no such charges to "cease," and is in full compliance with this Commission's rules and regulations. Id.

PNPA nevertheless complains that "BellSouth continues to charge paging providers in South Carolina for the facilities used to transport BellSouth-originated traffic." PNPA at 5. This Commission's regulations do not require BellSouth to provide all PCNA members with free

interconnection and transport facilities. See 11 FCC Rcd at 16013-18, ¶¶ 1033-1045. Moreover, the PNPA fails to recognize that this Commission's rules under sections 251 and 252 "have direct effect only in the context of the state-run arbitrations." Iowa Utils. Bd., 120 F.3d at 793 n.9. Paging providers have not requested interconnection in South Carolina, see Varner Reply Aff. ¶ 18, and thus they could not possibly benefit from any supposed Commission exception from the duty of paying tariffed rates for interconnection and transport facilities.

14. Resale.

In addition to arguing about CSAs and pricing, opponents rely on vague allegations of isolated mishaps and then mischaracterize them as widespread problems. For example, ignoring BellSouth's actual performance data showing nondiscriminatory treatment of CLECs, ACSI claims that BellSouth favors its own retail operations over ACSI with respect to due dates. ACSI bases this conclusion on just two examples in which BellSouth allegedly delayed filling an order. ACSI at 39-40; ACSI's Falvey ¶¶ 44-45. Because ACSI provides neither the name of the end-user customer nor the order number (and for the latter instance does not even indicate the relevant dates), neither BellSouth nor the Commission can evaluate ACSI's accusation. Varner Reply Aff. ¶ 5.

## IV. BELLSOUTH WILL COMPLY WITH SECTION 272

BellSouth has also demonstrated that it will provide interLATA services in South Carolina in complied with the requirements of section 272. BellSouth Corporation has created a separate affiliate (BellSouth Long Distance, Inc. ("BSLD")) which is operated independently of BellSouth Telecommunications, Inc. ("BST"). All transactions and other relationships between

the two companies, and their dealings with third parties, will be conducted in accordance with applicable requirements. See BellSouth Br. at 57-65.

AT&T and MCI criticize the amount of information that BellSouth has so far disclosed about BST's relationship with BSLD. AT&T at 53-54; MCI at 70-74. Ironically, their complaints are based on information obtained from BellSouth that BellSouth is not even obligated to disclose, since BellSouth has not yet received section 271 authorization. See BellSouth Br. at 59. Although the Act does not require BellSouth to satisfy the requirements of section 272 prior to receiving authorization, BellSouth has nevertheless disclosed significant information about BST and BSLD, including a summary description of all transactions between BST and BSLD, as well as a description of future services that may be provided. Jarvis Aff. ¶ 14.

While some CLECs have objected to the degree of detail contained in these summaries, the purpose of disclosure is not to provide CLECs with a detailed blueprint of the Bell companies' business plans, but rather to provide sufficient information to monitor compliance with the "nondiscrimination and accounting safeguards of the Act." See Report and Order, Implementation of the Telecommunications Act of 1996, Accounting Standards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17594, ¶ 123, ("Accounting Safeguards Order"). The summaries presented by BellSouth satisfy this objective for purposes of determining future compliance with section 272.[5]

[5] BellSouth notes, however, that it also has disclosed agreements between BST and BSLD on the Internet. They can be found at <http://www.bellsouthcorp.com/issues/transactions>.

The litany of more specific allegations made by MCI and AT&T are no more persuasive. MCI claims that BellSouth has improperly reassigned employees. MCI at 72-73. MCI is correct that a few employees of BellSouth who transferred to BSLD remained on BellSouth's payroll for between two and four weeks until their medical coverage, tax records, and other personnel matters could be properly transferred. MCI knows this because BellSouth has disclosed it. Jarvis Aff. ¶ 14c(9). BellSouth also has disclosed, however, that BellSouth billed BSLD for the appropriate correction at the fully distributed cost, so that BSLD gained no advantage as a result of this payroll transfer. Id.

MCI also purports to be disturbed that some BSLD employees previously worked for BellSouth, suggesting that BellSouth has reassigned these employees with the intent of using them to carry "free information." BSLD employees undoubtedly bring their past experiences and knowledge to their new jobs. This should not be a surprise, since it would be extremely difficult to run BSLD with only employees who had no experience in the industry. Experience and knowledge is part of what makes these employees valuable, as MCI recognizes by itself hiring former employees of BST and BSLD. BSLD's right to hire from the same talent pool as MCI and other interexchange carriers does not constitute discrimination or cross-subsidy.

MCI contends that BellSouth must "take effective steps" to ensure that former BST employees do not use their knowledge and experience to benefit BSLD. MCI at 73. According to MCI, every time an ex-BellSouth employee draws on knowledge and/or past experience to perform any function of his or her job, BSLD has an affirmative duty to disclose this event. Id. The utter unworkability of this suggestion, and the absence of any statutory support for it,

illustrates the weakness of MCI's underlying position regarding recruitment of BSLD employees.

MCI also argues that BSLD "should be paying a very substantial royalty" to BST for use of the BellSouth brand name in marketing long distance services. MCI at 74. There is nothing in the "language and purpose" of section 272 to "dictate" such a payment, as MCI weakly argues. Id. Moreover, as MCI admits in a footnote, the Commission has already ruled "that compensation for the value of brand names is not necessary." Id. at 74 n.29. Furthermore, the BellSouth brand name does not belong to BST, but to BellSouth Corporation. Cochran Reply Aff. ¶ 12.

Finally, MCI argues that BellSouth has provided BSLD with collocation space at a rate that is cheaper than the rate BellSouth is charging CLECs. MCI at 74. This assertion is also incorrect. BSLD has signed BST's standard collocation agreement, which is available to all CLECs that desire collocation space with BellSouth. See Cochran Reply Aff. ¶ 11. Contrary to MCI's further suggestion that BSLD has received preferential treatment by obtaining collocation space before it offers long distance services, BellSouth does not require that carriers be operational at the time they obtain collocation space. Id.

AT&T objects to BST's plan to provide joint marketing services for BSLD, claiming that BST's suggested telemarketing practice "on its face violates the equal access requirements of section 251(g)." AT&T at 58. However, in its Non-Accounting Safeguards Order, the Commission concluded that a BOC can meet its equal access obligations, while also engaging in joint marketing authorized under section 272(g), by "inform[ing] new local exchange customers of their right to select the interLATA carrier of their choice and tak[ing] the customer's order for

the interLATA carrier the customer selects." First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 21905, 22046, ¶ 292 (1996) ("Non-Accounting Safeguards Order"). While BST must inform customers of their right to select an interLATA carrier of their choice, it does not have to force its local customers to listen to a complete list of carriers that offer interLATA service in their area. Such a requirement would violate BellSouth's right to joint market, impose an unfair operational burden on BST, and inconvenience and frustrate customers. See BellSouth Br. at 64; see also Comments of Bell Atlantic on Petitions for Reconsideration, CC Docket No. 97-137 (discussing practical burden of AT&T's position on BOCs) (Ex. 19 hereto). If the Act's joint marketing provision is to have any meaning, BellSouth cannot be denied the opportunity to bring its affiliate's services to the customer's attention in a preferential fashion. See BellSouth Br. at 63-65.

AT&T's argument that BST must force customers to listen to a list of carriers and without giving any special mention to BellSouth's own service is, in fact, a microcosm of the opponents' whole approach to BellSouth's Application: They will gladly sacrifice the best interests of consumers to keep BellSouth out of long distance.

## V. THE PUBLIC BENEFITS OF FULL INTERLATA COMPETITION ARE OVERWHELMING

This Commission indicated in its Michigan Order that Bell company entry into interLATA services would promote competition in that market and thereby benefit consumers. See Michigan Order ¶ 388. Market evidence such as price reductions in Connecticut puts this fact beyond good-faith dispute. BellSouth Br. at 76-77. Indeed, the comments of the SCPSC (at

14-16); the views of the DOJ's retained economist (DOJ's Schwartz ¶¶ 97-98);[6] the hundreds of letters supporting BellSouth's application from South Carolina individuals, businesses, educational and charitable institutions, and government officials; and the conclusions of large users of telecommunications services and equipment manufacturers (Ad Hoc Coalition of Telecommunications Manufacturing Companies and Corporate Telecommunications Service Managers at 12-14), all reflect consensus that additional consumer choice in the interLATA market due to BellSouth's interLATA entry will increase consumer choice, lower prices, stimulate demand, and benefit ordinary consumers and the South Carolina economy.[7] Additional benefits in the intraLATA toll and manufacturing markets are assured as well. See BellSouth Br. at 82-83.

The general argument advanced for denying the public these benefits is that extracting additional local-market concessions from BellSouth and other Bell companies, beyond satisfaction of the checklist, might bring bigger benefits in the local market. See, e.g., DOJ at 49-50. Such arguments are legally untenable, for Congress forbade the Commission from using the public interest inquiry to re-write the 1996 Act or to set its own standard of open local

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[6] Here, for a change, DOJ provides views on matters within the antitrust arena where it has expertise, and where Congress intended it to advise the Commission.

[7] The incumbent long distance carriers' efforts at silencing public support for BellSouth's Application suggest how antagonistic their position is to the public interest. One supporter of BellSouth's application, the vice president of the South Carolina United Way, wrote a letter in August supporting BellSouth's application because he is "in favor of competition." He later was forced to withdraw the letter because of "the degree of concern" it caused "other companies who are already in the long distance market," explaining that support for BellSouth's Application had implicated the United Way's "corporate goodwill" and fundraising. Letter from Michael A. Gray, Vice President, United Way of the Midlands to the Hon. Reed Hundt of October 17, 1997.

markets. See BellSouth Br. at 68-72. These arguments are economically unsupported, for no effort has been made to assess the actual costs and benefits of delaying section 271 relief once the competitive checklist has been satisfied. And they are factually unfounded, because the SCPSC, joining other state commissions such as the Louisiana PSC and the Oklahoma Corporation Commission, has found that Bell company in-region, interLATA entry is the surest way to promote local competition.[8] There is no record basis for this Commission to find that the unquantified possible benefits of more nearly perfect local competition sometime in the distant future outweigh the certain consumer losses from further delaying BellSouth's interLATA entry in South Carolina.

Moreover, there is no guarantee that erecting additional regulatory barriers to interLATA competition will bring benefits of any kind to the local market, at any time.[9] In the near term,

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[8] See Compliance Order at 66 ("The Commission believes that local competition may speed up considerably upon the lowering of the barriers to BSLD competing for long distance business."); Comments of the Oklahoma Corporation Commission at 11, Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (filed May 1, 1997) ("[O]nce full long distance competition is opened up in Oklahoma, the major competitive providers of local exchange service will take notice and adjust their business plans to move Oklahoma closer to the top of their schedules, resulting in faster and broader local exchange competition for Oklahoma consumers."); Order U-22252-4 at 11, Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Docket. U-22252 (La. PSC Sept. 5, 1997) (finding that "consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market").

[9] We assume for present purposes that a failure to set clear, achievable standards for section 271 relief will not simply drive Bell companies to stop trying, although there are signs to that effect. See Waiting For New Commissioners: Notebaert Says Ameritech Can't Follow Sec. 271 'Road Map', Communications Daily, Oct. 29, 1997, at 1-2 (Ameritech puts off long distance entry plans until "it determines whether new FCC members will have different interpretations of Telecom Act checklist requirements" because the Commission's suggested test is "impossible"